



Office of the Attorney General

State of Texas

August 13, 1992

DAN MORALES

ATTORNEY GENERAL

Ms. Tamara Armstrong
Assistant County Attorney
Travis County Courthouse
P. O. Box 1748
Austin, Texas 78767

OR92-472

Dear Ms. Armstrong:

Travis County asks whether certain information concerning an investigation of the Children's Trust Fund of Texas (CTF) is subject to required public disclosure under the Texas Open Records Act, V.T.C.S. article 6252-17a. Your request was assigned ID# 15438.

Pursuant to the Open Records Act, Travis County received a request for all information relating to its investigation of the CTF at the request of the Texas Department of Human Services (DHS) Inspector General. The county has submitted responsive documents for our review, consisting of: a letter from the Travis County district attorney's office to the DHS Inspector General dated Dec. 21, 1989, concerning the results of the investigation (Exhibit A); investigative notes and sworn witness statements describing interviews with various witnesses and CTF employees (Exhibit B); a synopsis of an interview with a witness dated Oct. 12, 1989 (Exhibit C); and a letter from Phil Strickland to Peggy Smith dated Oct. 9, 1989 (Exhibit D). The county contends that portions of these documents are excepted from required public disclosure by Open Records Act sections 3(a)(1), 3(a)(7), 3(a)(8), and 3(a)(11).

Open Records Act section 3(a) states that all information in the possession of a governmental body is public information, subject to the following exceptions:

- (1) information deemed confidential by law, either Constitutional, statutory, or by judicial decision;

....

- (7) matters in which the duty of the Attorney General of Texas or an attorney of a political subdivision, to his client, pursuant to the Rules and Canons of Ethics of the State Bar of Texas, are prohibited from disclosure, or which by order of a court are prohibited from disclosure;

....

- (8) records of law enforcement agencies and prosecutors that dealt with the detection, investigation, and prosecution of crime and the internal records and notations of such law enforcement agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution; [and]

....

- (11) inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency.

You first claim that the advice or recommendation of the Travis County district attorney to the DHS Inspector General, as reflected on Exhibit A, is excepted pursuant to section 3(a)(7). Section 3(a)(7) is intended to protect from public disclosure attorney-client communications to the same extent as the Code of Professional Responsibility. *See* Open Records Decision Nos. 574 (1990); 462 (1987). Accordingly, information reflecting the advice and recommendation of a state attorney to his client agency may be excepted from required public disclosure pursuant to section 3(a)(7). *Id.* We have concluded that the marked portions of Exhibit A reflect the recommendation of a state attorney to his client agency, and therefore this information is excepted by section 3(a)(7), and may be withheld.

You next claim that Exhibit B, the investigative notes summarizing the results of the investigation and the sworn statements of the witnesses, should be excepted in their entirety by section 3(a)(8). You argue that maintaining the confidentiality of this information will encourage witnesses in future cases to be forthcoming.

If we were to adopt the broad rule you suggest, then virtually all investigative files would be excepted from disclosure, which, we believe, is contrary to the spirit and the letter of the Open Records Act. We have previously ruled that information in a closed criminal investigative file may be withheld pursuant to section 3(a)(8) where its disclosure would unduly interfere with law enforcement. *See* Open Records Decision Nos. 478, 456 (1987); 350, 341 (1982). However, the investigative unit must demonstrate particularized law enforcement concerns; nebulous and speculative concerns are not sufficient. *See e.g.*, Open Records Decision Nos. 582 (1990); 444, 434 (1986). You have failed to demonstrate particular reasons why the disclosure of the information would unduly interfere with law enforcement efforts, and thus this information is not excepted pursuant to section 3(a)(8).

The county next claims that Exhibit C, the synopsis of the interview should be excepted pursuant to sections 3(a)(8) and 3(a)(1); this interview is also briefly described in Exhibit B.

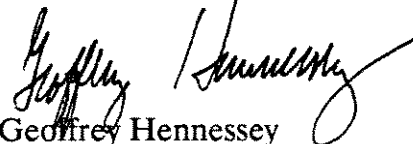
As previously discussed, section 3(a)(8) does not warrant exception of this information from public disclosure. You contend that this information may be withheld pursuant to section 3(a)(1) on the basis of the informer's privilege. The informer's privilege authorizes a governmental body to withhold information which would reveal the identity of a person who reports possible violations of the law to law enforcement officials. Open Records Decision Nos. 462 (1987); 434 (1986). The content of an informer's communications may be withheld where it is necessary to protect the informer's identity. Open Records Decision Nos. 582, 579 (1990); 377 (1983). We have reviewed Exhibit C and the highlighted portions of Exhibit B, and have concluded that they contain information which could be construed as allegations of a crime. Therefore, the identity of this informant and information which tends to identify this informant may be redacted from Exhibit C and the highlighted portions of Exhibit B, and withheld pursuant to the informer's privilege. We do not believe the informant's privilege warrants withholding Exhibit C and the highlighted portions of Exhibit B in their entirety. Rather, only the identity of the informant and information that would tend to identify the informant may be withheld; the remaining portions should be disclosed.

You next claim that portions of a letter from Phil Strickland to Peggy Smith dated Oct. 9, 1989, Exhibit D, are excepted from required public disclosure pursuant to section 3(a)(11). Section 3(a)(11) excepts from public disclosure advice, opinion, or recommendation reflected in inter-agency or intra-agency memoranda. Open

Records Decision Nos. 574 (1990); 470, 464 (1987). In the letter, Mr. Strickland explains to Ms. Smith certain administrative details concerning the operation of the CTF and offers his opinion and evaluation of administrative personnel. The records show that Peggy Smith and Phil Strickland were members of the CTF council; Ms. Smith was later appointed chairperson of the council. Pursuant to Human Resources Code section 74.002 the CTF council is a state agency. Therefore, the advice, opinion, and recommendation that you have identified on Exhibit D is excepted and may be withheld pursuant to section 3(a)(11).

In sum, the requested documents should be released to the requestor, with the exception of the information specifically identified above which should be redacted and thereby withheld. Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-472.

Very truly yours,



Geoffrey Hennessey
Assistant Attorney General
Opinion Committee

GH/lmm

Ref.: ID# 15438

cc: Mr. Charles Hannasch
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